EXHIBIT "F"

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BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE "A MILLION LITTLE PIECES"
LITIGATION

MDL Docket No. 1771

PLAINTIFFS' JOINT RESPONSE TO DEFENDANTS' MOTION TO TRANSFER AND CONSOLIDATE ACTIONS PURSUANT TO 28 U.S.C. §1407, INCLUDING ARGUMENT FOR TRANSFER TO THE NORTHERN DISTRICT OF ILLINOIS

Plaintiffs in four of the related actions, pending in two venues – *i.e.,* Plaintiff Vedral, 06 CV 0935 (N.D. Illinois), Plaintiff Giles, 06 CV 58 (S.D. Ohio), Plaintiff More, 06 CV 0934 (N.D. Illinois), and Plaintiff Brackenrich, 06 CV 1021 (N.D. Illinois)[1] – jointly submit the following memorandum in response to the Motion to Transfer and Consolidate ("Motion") filed by the common Defendants, Random House, Inc., and Doubleday & Company, Inc. (collectively herein, "Defendants"), stating as follows:

[1] A fifth related case, *Strack*, 06 C 0933 (N.D. Ill.), is also pending in the Northern District of Illinois.

INTRODUCTION

Plaintiffs agree with the Motion on all points but one: Defendants' first choice of transferee court for the conduct of pretrial proceedings in the consolidated actions. The Motion requests transfer to the District Court for the Southern District of New York, yet it concedes the merit of transferring the actions, and seeks to transfer as a second choice, to the District Court for the Northern District of Illinois. *See* Motion, ¶ 6. Consolidation is appropriate in this case. The Northern District of Illinois is the most appropriate forum for transfer, for the numerous reasons set forth below.

ARGUMENT

I. Plaintiffs Agree with the Defendants that Consolidation and Transfer of the Related Actions Is Appropriate Pursuant to Section 1407.

Transfer and consolidation of the thirteen similarly pending actions to the Northern District of Illinois is appropriate because, pursuant to 28 U.S.C. § 1407, (1) these cases involve common factual questions, (2) transfer to N.D. Illinois will further the convenience of the parties and the witnesses, and (3) transfer to N.D. Illinois will promote the just and efficient conduct of these actions.

A. Plaintiffs Agree with the Defendants that Consolidation Is Appropriate in that the Related Actions involve Common Questions of Fact.

Plaintiffs agree with the Defendants that the first requirement of Section 1407 – that the actions to be transferred involve common questions of fact – is clearly satisfied. The factual issues to be determined in each of the actions proposed for transfer and coordination arise from the same course of conduct and, hence, are virtually identical. *See In re Japanese Elec. Prodcs. Antitrust Litig.*, 388 F. Supp. 565, 567 (J.P.M.L. 1975) ("[t]ransfer under § 1407 is not dependent on strict identity of issues and parties but rather on the existence of one or more common questions of fact"); *In re Glen W. Turner Enters. Litig.*, 383 F. Supp. 884 (J.P.M.L. 1974) (transferring action whose sole defendant was not a defendant in the actions in transferee district, where allegations in the transferred action nonetheless raised many of the same factual issues asserted in actions pending in transferee district). Among the numerous common factual questions of fact at issue in the related actions are:

- Whether the book *A Million Little Pieces* contained material fabrications;
- Whether the advertisements and marketing of (or on) the book were false and misleading;
- Whether the advertisements and marketing of the book deceived the purchasers of the book;
- Whether the Defendants' conduct violates the similar deceptive practices acts of the various states; whether a single state's law applies to all consumers of the book; and
- The appropriate measure of damages sustained by purchasers of the book.

These same factual issues to be determined in the related actions are nearly identical, making transfer and consolidation highly appropriate. *See, e.g., In re Cement and Concrete Antitrust Litig.*, 437 F. Supp. 750, 752 (J.P.M.L. 1977) (ordering transfer and noting "the substantial amount of discovery shared by all actions concerning the existence, scope and effect" of the wrongful conduct alleged).

Further lending merit to consolidation, at least ten of the related cases propose certification of a single nationwide class based on violation of state law, such as breach of contract or similar state deceptive practices acts. *Strack*, 06 CV 0933 (N.D. Ill.), Compl.

¶ 16; *More*, 06 CV 0934 (N.D. Ill.), Complt. ¶ 18; *Vedral*, 06 CV 0935 (N.D. Ill.), Complt. ¶ 24; *Brackenrich*, 06 CV 1021 (N.D. Illinois), Complt., ¶ 20; *Giles*, 06 CV 058 (S.D. Oh.), Complt. ¶ 24; *Rivard*, 06 CV 10759 (E.D. Mich.), Complt. ¶ 9-10; *Hauenstein*, 06 CV 1030 (C.D. Ca.); *Floyd*, 06 CV 0693 (S.D. N.Y.), Complt. ¶ 118; *Marolda*, 06 CV 1167 (S.D. N.Y.), Complt. ¶ 9; and an action practically identical to *Marolda* filed by the same counsel, *Cohn*, 06 CV 1360 (S.D. N.Y.), Complt. ¶ 8.

B. Plaintiffs Agree with the Defendants that Transfer and Consolidation Will Further the Convenience of the Parties and Promote the Just and Efficient Conduct of these Actions.

The actions arise from a common core of factual allegations. The same witnesses – such as the named plaintiffs, the defendants, their employees, and third parties such as Oprah Winfrey and her television show producers and staff (*see* II., *infra*) – and the same discovery will be relevant to all of the related actions. Most of the actions, moreover, seek to certify a nationwide class of purchasers. Therefore, a strong likelihood exists of duplicative discovery demands and redundant depositions, and of rulings on similar if not identical motions.

Consolidation, however, enables a single judge to establish a pretrial program that will minimize such inconvenience to the witnesses and expenses of the parties, avoid needless duplication of discovery and resources, and eliminate the possibility of inconsistent rulings on important common issues such as class certification. These ends are the very purposes behind consolidation of actions in different jurisdictions. *See, e.g.*, *In re Fine Paper Antitrust Litig.*, 453 F. Supp. 118, 121 (J.P.M.L. 1978) ("Section 1407 transfer . . . is necessary in order to prevent duplicative discovery and eliminate any possibility of conflicting class and other pretrial rulings."); *In re Computervision Corp. Sec. Litig.*, 814 F. Supp. 85, 86 (J.P.M.L. 1993) (holding that transfer is necessary to prevent inconsistent rulings, especially regarding class certification); *In re Cuisinart Food Processor Litig.*, 506 F. Supp. 651, 655 (J.P.M.L. 1981); *Japanese Products Antitrust Litig.*, 388 F. Supp. 565, 567 (J.P.M.L. 1975); *In re Universal Service Fund Tel. Billing Practices Litig.*, 209 F. Supp. 2d 1385, 1386 (J.P.M.L. 2002); *In re Multi-Piece Rim Products Liab. Litig.*, 464 F. Supp. 969, 974 (J.P.M.L. 1979).

II. Transfer is Most Appropriate to the Northern District of Illinois.

By this response, Plaintiffs in four of the related actions seek transfer to the Northern District of Illinois. A fifth related action, *Strack*, 06 C 0933 (N.D. Ill.), is also pending in the Northern District of Illinois. Notably, notwithstanding their argument in favor of the Southern District of New York as the appropriate forum for transfer of the consolidated actions, the Defendants acknowledge that the Northern District of Illinois is centrally located, and request, as their second choice, that the proceedings be transferred to the Northern District of Illinois.

In fact, transfer to the Northern District of Illinois would serve the interest in conserving judicial resources, given that the Northern District of Illinois is actively handling and consolidating the related actions before it; Chief Judge Charles P. Kocoras and/or Judge John F. Grady, N.D. Illinois, have already ordered that each of the four cases pending there be related under the first case filed before Judge Grady. (Orders, Gr. Exhibit A.) *See In re Pineapple Antitrust Litig.*, 342 F. Supp. 2d 1348, 1349 (J.P.M.L. 2004) (noting that all of the actions pending in the transferee district "have been consolidated and are proceeding apace before one judge…").

Assignment to the Northern District of Illinois will better distribute judicial resources, because the Northern District of Illinois has **12** MDL actions pending, while the Southern District of New York has a whopping **37** MDL actions already pending, as of January 10, 2006. (Pending MDL Dockets, Exhibit B.) Moreover, the average number of civil actions per judgeship is noticeably lower in the Northern District of Illinois (369) than in the Southern District of New York (409), which logically positions the Northern District of Illinois docket to preside over the related actions. (U.S. Dist. Court Judicial Caseload Profiles received from Admin. Office of the U.S. Courts, Exhibit C.) The Defendants' Motion and Memorandum overlook these factors.

Further, because Chicago is a centrally located national transportation hub and the majority of Plaintiffs in the actions in question live in the Midwest or on the West Coast, the Panel should centralize the actions in the United States District Court for the Northern District of Illinois, rather than in the Southern District of New York.

The Defendants base their argument in support of transfer to the Southern District of New York upon the fact that the Southern District of New York is the forum in which the greatest number of Plaintiffs chose to file their actions, while discussing New York's convenience as a forum for litigants. (Def. Memo. at 6.) However, four pending class actions are filed in the Northern District of Illinois – the same number that has been filed in New York.[2] Therefore, an equal number of Plaintiffs filed in both the Southern District of New York and the Northern District of Illinois. It bears noting, moreover, that two of the actions pending in the Southern District of New York were filed by the same counsel. *See Cohn,* 06 CV 1360 (S.D. N.Y.), *Marolda,* 06 CV 1167 (S.D. N.Y.).

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[2] At the time Defendants filed the instant Motion only three cases were pending in the Northern District of Illinois. Since the filing of the instant Motion, a fourth case has been filed in the Northern District of Illinois. *See Brackenrich v. Frey, et al.*, No 06 CV 1021, N.D. Ill., filed February 23, 2006. For convenience, Plaintiff Brackenrich's Class Action Complaint, which was not appended to the Defendant's Motion, is attached hereto as Exhibit D.

In fact, the majority of Plaintiffs – *nine* in number – live in the Midwest and West. The geographic concentration of Plaintiffs in the Midwest and West militates against New York and in favor of Chicago (the seat of the United States District Court for the Northern District of Illinois) as the transferee forum.

In addition to arguing that the greatest number of Plaintiffs live in the Southern District of New York – which is no longer true – the Defendants argue that New York is the appropriate forum notwithstanding the geographic dispersion of Plaintiffs because New York is "in a major metropolitan area that is 'well served by major airlines, provides ample hotel and office accommodations, and offers a well developed system of legal services.'" Def. Mem. at 7 (citing two of this Panel's opinions). However, these factors are equally present in Chicago. Plainly, the Northern District of Illinois is centrally located, a fact recognized by the Defendants' citation to *In re Ameriquest Mortgage Co. Mortgage Lending Practices Litig.*, Docket No. 1715, 2005 U.S. Dist. LEXIS 33568 at *4 (J.P.M.L. Dec. 13, 2005) ("[T]his geographically central district will be a convenient location for a litigation already nationwide in scope.").

The Panel has long recognized the geographic location of the Midwest as a factor supporting transfer of cases to Midwestern forums. *See In re Monosodium Glutamate Antitrust Litig.*, Docket No. 1328, 2000 U.S. Dist. LEXIS 2451 at *3 (J.P.M.L. March 2, 2000) (District of Minnesota an appropriate transferee forum in nationwide litigation in which no district serves as center of gravity); *In re Realnetworks, Inc. Privacy Litig.*, Docket No. 1329, 2000 U.S. Dist LEXIS 1458 at *3-4 (J.P.M.L. Feb. 10, 2000) (Northern District of Illinois appropriate transferee forum due to geographic centrality); *In re MCI Non-Subscriber Telephone Rates Litig.*, Docket No. 1275, U.S. Dist. LEXIS 5076 at *2

(J.P.M.L. April 14, 1999) (Southern District of Illinois an appropriate transferee forum in nationwide litigation in which no district serves as center of gravity); *In re Transit Co. Tire Antitrust Litig.*, 350 F. Supp. 1165, 1166 (J.P.M.L. 1972) (Western District of Missouri an appropriate transferee forum in litigation involving cases filed in Florida, Pennsylvania, California, Missouri).

Travel to Chicago will be substantially easier and more economical for the four Illinois plaintiffs (all of whom filed in the Northern District of Illinois), the Ohio plaintiff (on behalf of whom this brief is filed), the Michigan plaintiffs, and the state of Washington and California plaintiffs. Additionally, Chicago's status as a transport hub will make it quite easy and economical for the parties to attend pretrial proceedings in Chicago. For example, a non-stop flight from Los Angeles or Seattle to New York takes roughly five hours. This means that the West Coast plaintiffs must devote a complete day to travel in order to attend proceedings in New York, and must stay overnight in New York or return to Los Angeles or Seattle late at night. By contrast, a non-stop flight between Chicago and New York takes roughly two hours, meaning that the Defendants could travel to Chicago, attend a proceeding, and return to New York the same day -- and spend less time total in flight than the West Coast Plaintiffs would spend going one way.

Indeed, transferring the proceedings to Northern District of Illinois would be efficient not only for the parties and the courts, but also for counsel, given that counsel for the defendants and for five of the Plaintiffs' actions filed (i.e., counsel for the four cases pending in N.D. Illinois, and counsel for *Giles*, filed in S.D. Ohio) are all in Chicago. The publishing Defendants' lawyers, Sidley Austin, also have principal offices in Chicago, and their Motion to Transfer and Consolidate is penned only by their attorneys who have appeared from their offices in Chicago and in Los Angeles, California. Likewise, McDermott Will & Emery, counsel for defendant Frey, who did not sign the publishing Defendants' Motion, has entered an appearance from its offices in Chicago. *See In re Amino Acid Lysine Antitrust Litig.*, 910 F. Supp. 696, 698 (J.P.M.L. 1995) (consolidation and coordination is appropriate to "conserve the resources of the parties, their counsel and the judiciary").

With respect to access to witnesses, transfer to the Northern District Illinois makes sense because the nine Midwest and West coast Plaintiffs, are closer to, and will find it easier to travel to Chicago for discovery than New York.

The Northern District of Illinois also provides far greater access to non-party witnesses. Oprah Winfrey, and her staff and producers who interviewed James Frey, obviously reside in Chicago, the location of Ms. Winfrey's television program – the very television program in which, as alleged in the class action complaints filed in this matter, Frey twice appeared, marketing his book as a true story in 2005, but then admitting that his book was rife with fabrications in January 2006. Per the pleadings in the complaints, Ms. Winfrey, and her producers and staff, can testify to their assessment of the book's accuracy and to reassurances from the defendants regarding same, and to facts surrounding the recommendation of the book by Oprah Winfrey's "book club," which turned the book into an overnight best-seller. *See, e.g., Vedral,* 06 C 0935 (N.D. Ill.), Compl. ¶¶ 2, 14, 18; *Snow,* 06 CV 669 (S.D. N.Y.), Compl. ¶¶ 12, 15-16, 18; *Floyd*, 06 CV 0693 (S.D. N.Y.), Compl., ¶¶ 32-35.

The book itself purports to be a true story about a drug addict, Frey, and his several weeks of treatment at the Hazelden Clinic in Minnesota. The veracity of the story